
**IN THE
SUPREME COURT OF MISSOURI**

No. SC84212

IN RE ANCILLARY ADVERSARY PROCEEDING QUESTIONS

**Cole County
Consolidated Case Nos. CV189-808CC and CV189-809CC**

**APPEAL FROM THE COLE COUNTY CIRCUIT COURT
HONORABLE WARD B. STUCKEY
SPECIAL JUDGE**

**ALEX BARTLETT, #17836
HUSCH & EPPENBERGER, LLC**

**235 East High Street
P. O. Box 1251
Jefferson City, Missouri 65102
Phone: (573) 635-9118
Facsimile: (573) 634-7854**

**ATTORNEYS FOR RESPONDENT
JACKIE BLACKWELL**

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	6
JURISDICTIONAL STATEMENT	13
INTRODUCTION.....	14
STATEMENT OF FACTS	16
The Commencement of the Case and Stay Order.....	16
Order Appointing First Receiver.....	17
The Prohibition Proceedings	19
Payment by Southwestern Bell and Second Receivership Order	19
Settlement of the Rate Litigation and the Refund Process.....	22
Closure of Second Receivership	24
The Third Receivership.....	26
Collection and Administrative Duties Imposed on State Treasurer in 1993	26
Proceedings Re the Unclaimed Property Act.....	26
POINTS RELIED ON	35
ARGUMENT.....	40

I. The trial court did not err as asserted in Appellant's Points I through X inasmuch as the State Treasurer had and has no authority or standing to collect unclaimed property or administer the Uniform Disposition of Unclaimed Property Act because those are duties imposed by statute which cannot constitutionally be imposed upon the State Treasurer because

of the provisions of Article IV, Section 15, Missouri Constitution, prohibiting the imposition of any duty by law which is not related to the “receipt, investment, custody and disbursement of state funds and funds received from the United States government” and, alternatively, because the statutes imposing collection and administrative duties under said Act were enacted in violation of the “single subject” and “clear title” provisions of Article III, Section 23, Missouri Constitution40

II. The trial court did not err as asserted in Appellant’s Points I through X because the Cole County Circuit Court has the authority to make a disposition of the funds (including interest thereon) and in this case even if *arguendo* the State Treasurer has the authority to assert claims and collect unclaimed property pursuant to the Uniform Disposition of Unclaimed Property Act.....43

III. The trial court did not err as asserted in Appellant’s Points I through X because the Appellant State Treasurer is not in a position to make any claim to the funds in this case pursuant to the Uniform Disposition of Unclaimed Property Act.....47

IV. The trial court did not err as asserted in Appellant’s Point III inasmuch as interest upon the funds in this case may be used and disbursed as provided in the Orders Appointing Receiver and in Section 483.310.2, RSMo48

V. The trial court did not err as asserted in Appellant’s Point IV inasmuch as the Motion for Judgment on the Pleadings incorporated other pleadings and motions, that Motion could be considered as a motion to dismiss and the trial

court could properly conclude that the State Treasurer could not assert a claim to the funds or had not properly asserted a claim to the funds.	48
VI. The trial court did not err as asserted in Appellant’s Points V, VI, VII, IX and X inasmuch as the Cole County Circuit Court had and continues to have jurisdiction over the funds in this case, any claim to the funds held in this case must be asserted in this case, the Circuit Court has the authority to require persons claiming funds held in this case to appear and show their entitlement to the funds, the Appellant was properly served with the July 20, 2001, Order and the Motion and Petition, and the Appellant is not entitled to any order of disqualification.....	49
CONCLUSION.....	51
CERTIFICATE OF COMPLIANCE.....	53
CERTIFICATE OF SERVICE.....	54

APPENDIX

Appendix A – Order and Judgment, Entered on November 27, 2001, by the Honorable Ward B. Stuckey	A-01
Appendix B – Forde, “What Can a Court Do With Leftover Class Action Funds? Almost Anything!”, 35 <u>Judges’ Journal</u> 19 (Summer 1996, American Bar Association)	A-05
Appendix C –Order Transferring Funds From the Registry of the Court and Appointing Receiver, Entered on April 26, 1993, by the Honorable Thomas J. Brown, III	A-13
Appendix D – Motion and Petition for Joinder of Additional Parties and for Relief in an Ancillary Adversary Proceeding in the Nature of Interpleader and for Other Relief, filed July 20, 2001	A-20
Appendix E – Order, Entered on July 20, 2001, by the Honorable Thomas J. Brown, III	A-38

TABLE OF AUTHORITIES

Page

Cases

<i>Ainsworth v. Old Security Life Insurance Co.</i> , 685 S.W.2d 583	
(Mo. App. W.D. 1985)	50
<i>American Refractories Co. v. Combustion Controls</i> , 70 S.W.3d 660	
(Mo. App. S.D. 2002).....	50
<i>Angelo v. City of Hazelwood</i> , 810 S.W.2d 706 (Mo. App. E.D. 1991).....	38, 49
<i>Blydenburg v. David</i> , 413 S.W.2d 284 (Mo. banc 1967).....	42
<i>Board of Public Buildings v. Crowe</i> , 363 S.W.2d 598 (Mo. banc 1962).....	35, 42
<i>Brady v. Ansehl</i> , 787 S.W.2d 823 (Mo. App. E.D. 1990).....	39, 50
<i>Buechner v. Bond</i> , 650 S.W.2d 611 (Mo. banc 1983)	42
<i>Carmack v. Director, Department of Agriculture</i> , 945 S.W.2d 956	
(Mo. banc 1997)	35, 42
<i>Clay v. Eagle Reciprocal Exchange</i> , 368 S.W.3d 344 (Mo. 1963).....	50
<i>Crist v. ISC Financial Corp.</i> , 752 S.W.2d 489 (Mo. App. W.D. 1988)	50
<i>Democratic Central Committee of the District of Columbia v. Washington</i>	
<i>Metropolitan Area Transit Commission</i> , 84 F.3d 451 (D.C. Cir. 1996)	45
<i>Director of Revenue v. State Auditor</i> , 511 S.W.2d 779 (Mo. 1974).....	35, 42
<i>Friar v. Vanguard Holding Corporation</i> , 509 N.Y.S.2d 374 (N.Y. App.	
Div. 1986).....	36, 45
<i>Home Builders Association of St. Louis v. State</i> , Case No. SC83863, 2002,	

WL 1051989, ____ S.W.3d ____ (Mo. banc May 28, 2002)	42
<i>Houck v. Folding Carton Administration Committee</i> , 881 F.2d 494 (7 th Cir. 1989).....	45
<i>Howell v. Division of Employment Security</i> , 215 S.W.2d 467 (Mo. 1948)	42
<i>In Re Folding Carton Antitrust Litigation</i> , No. MDL 250, 1991 WL 32857 (N.D. Ill. March 6, 1991).....	45
<i>In Re Miamisburg Train Derailment Litigation</i> , 635 N.E.2d 46 (Ohio App. 1993).....	46
<i>In Re Transit Casualty Co. in Receivership v. William Blair Realty Partners, II, v. Transit Casualty Co. in Receivership</i> , 900 S.W.2d 671 (Mo. App. W.D. 1995).....	45, 50
<i>In Re Transit Casualty Co. in Receivership, Pulitzer Publishing Co. v. Transit Casualty Co. in Receivership</i> , 43 S.W.3d 293 (Mo. banc 2001)	45, 50
<i>In Re Wells Fargo Securities Litigation</i> , 991 F. Supp. 1193 (N.D. Cal. 1998).....	46
<i>Jenkins v. Jenkins</i> , 784 S.W.2d 640 (Mo. App. W.D. 1990)	51
<i>Jones v. National Distillers</i> , 56 F.Supp.2d 355 (S.D. N.Y. 1999).....	46
<i>Kelly v. Hanson</i> , 931 S.W.2d 816 (Mo. App. W.D. 1996)	43
<i>Market Street Railway Co. v. Railroad Commission</i> , 171 P.2d 875 (Cal. Bank 1946).....	45
<i>Missouri Coalition for the Environment v. Joint Committee on Administrative Rules</i> , 948 S.W.2d 125 (Mo. banc 1997)	45
<i>Neun v. Blackstone Building & Loan Association</i> , 50 S.W.436 (Mo. 1899).....	49
<i>Northern Natural Gas Co. v. Federal Power Commission</i> , 225 F.2d 886, 8 th Cir. 1954).....	46
<i>Powell v. Georgia-Pacific Corp.</i> , 119 F.3d 703 (8 th Cir. 1997)	45

<i>Robin Farms, Inc. v. Bartholomew</i> , 989 S.W.2d 238 (Mo. App. W.D. 1999).....	39, 51
<i>Roosevelt Federal Savings & Loan Association v. First National Bank of Clayton</i> , 614 S.W.2d 289 (Mo. App. E.D. 1981).....	50
<i>State Auditor v. Joint Committee on Legislative Research</i> , 956 S.W.2d 228 (Mo. banc 1997)	42
<i>State ex rel. Buchanan v. Jensen</i> , 379 S.W.2d 529 (Mo. banc 1964)	51
<i>State ex rel. Eagleton v. Champ</i> , 393 S.W.3d 516 (Mo. banc 1965).....	37, 47
<i>State ex rel. Fischer v. Public Service Commission</i> , 670 S.W.2d 24 (Mo. App. W.D. 1984)	50
<i>State ex rel. Gleason v. Rickhoff</i> , 541 S.W.2d 47 (Mo. App. E.D. 1977).....	39, 51
<i>State ex rel. Hampe v. Ittner</i> , 263 S.W. 158 (Mo. 1924)	45
<i>State ex rel. South Missouri Pine Lumber Co. v. Dearing</i> , 79 S.W. 454 (Mo. banc 1904)	45
<i>State ex rel. Sullivan v. Reynolds</i> , 107 S.W.487 (Mo. banc 1907)	39, 49
<i>State ex rel. Thompson v. Board of Regents for Northeast Missouri State Teachers' College</i> , 264 S.W. 698 (Mo. banc 1924).....	42
<i>State ex rel. Weinstein v. St. Louis County</i> , 451 S.W.2d 99 (Mo. banc 1970).....	44
<i>State on Inf. of Attorney General v. Arkansas Lumber Co.</i> , 190 S.W. 894 (Mo. banc 1916)	50
<i>State Tax Commission v. Administrative Hearing Commission</i> , 641 S.W.2d 69 (Mo. banc 1982)	36, 45
<i>State v. Kinder</i> , 942 S.W.2d 313 (Mo. banc 1996).....	51

<i>State v. Levi Strauss & Co.</i> , 715 P.2d 564 (Cal. Bank 1986).....	36, 46
<i>State v. Planned Parenthood</i> , 66 S.W.3d 16 (Mo. banc 2002).....	43
<i>United States v. Morgan</i> , 307 U.S. 183 (1937).....	45
<i>Van Gemert v. Boeing Company</i> , 739 F.2d 730 (2 nd Cir. 1984).....	36, 45
<i>Wilkes v. The King</i> , (1768) Wilm. at pp. 327.....	43

Statutes

Section 100.260, RSMo 2000.....	43
Section 104.150, RSMo 2000.....	43
Section 104.440, RSMo 2000.....	43
Sections 288.290 through 288.330, RSMo	43
Section 447.503(7), RSMo 2000.....	36, 37, 43, 47
Section 447.517, RSMo 2000.....	36, 43
Section 447.532.1, RSMo 2000.....	36, 54
Section 447.536, RSMo 2000.....	36, 37, 43, 47
Section 447.539, RSMo 2000.....	36, 43
Section 447.543, RSMo 2000.....	36, 43
Section 447.575, RSMo 2000.....	13, 26, 36, 43
Section 483.310.2, RSMo	38, 48
Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 566, 87 th General Assembly First Regular Session.....	26, 36, 42

House Bill No. 1088, 82 nd General Assembly, Second Regular Session	43, 47
Uniform Disposition of Unclaimed Property Act, Sections 447.500 to 447.595, RSMo	42, 46, 47
28 U.S.C. § 2041.....	46
28 U.S.C. § 2042.....	46

Other Authorities

Cooley, “Predecessors of the Federal Attorney General: The Attorney General in England and the American Colonies”, The American Journal of Legal History, Vol. 2, page 304, 307 (1958)	43
Debates, Missouri Constitutional Convention, June 1944.....	35, 41
Forde, “What Can a Court Do With Leftover Class Action Funds? Almost Anything!”, 35 <u>Judges’ Journal</u> 19 (Summer 1996, American Bar Association).....	37, 45
Opinion No. 110 of Attorney General Danforth, January 12, 1970.....	36, 42
State Auditor Report No. 2000-01 (January 4, 2000)	26

Missouri Supreme Court Rules

Rule 2, Canon 3.....	51
Rule 6.04.....	43
Rule 7	43
Rule 7.02.....	43

Rule 44.01(d)	39, 51
Rule 51.07.....	51
Rule 52.07.....	39, 50
Rule 54.01.....	39, 50
Rule 54.02.....	50
Rule 66.02.....	39, 49
Rule 68.02.....	17, 20, 45

Missouri Constitutional Provisions

Article II, § 1 (Current).....	37, 44, 51
Article III, § 23 (Current).....	36, 40, 42
Article III, § 36 (Current).....	42
Article IV, § 13 (1945).....	36, 41
Article IV, § 14 (1945).....	36, 41
Article IV, § 15 (1945).....	35, 41
Article IV, § 15 (Current)	35, 36, 40, 41
Article IV, § 22 (1945).....	36, 41
Article IV, § 36(a) (Current).....	42
Article V, § 1 (Current).....	37, 44
Article V, § 3 (Current).....	37, 44
Article V, § 4 (Current).....	37, 44, 51
Article V, § 8 (Current).....	37, 44

Article V, § 14 (Current).....	37, 44
Article X, § 15 (1875).....	42
Article X, § 17(1) (Current).....	42

JURISDICTIONAL STATEMENT

The trial court, in its Order and Judgment, determined that inasmuch as Art. IV, § 15, Mo. Const., restricts the duties that may be imposed upon the State Treasurer to those relating to “the receipt, investment, custody and disbursement of state funds and funds received from the United States government” and inasmuch as “the funds in question are not state funds or funds received from the United States government,” the “State Treasurer had no standing or right to assert claims against the funds in Consolidated Case Nos. CV189-808CC and CV189-809CC” (L.F. 316; App. A to this Brief). In effect, the trial court held Section 447.575, RSMo, authorizing the State Treasurer to take actions to collect unclaimed property was unconstitutional because it assigned such duty to the State Treasurer contrary to the provisions of Art. IV, § 15, Mo. Const. Because the validity of a statute is involved, this Court has exclusive jurisdiction of this appeal under Art. V, § 3, Mo. Const.

INTRODUCTION

The appeal in this case, SC84212, involves legal issues that are common to those issues in SC84210, as well as in SC84211 and SC84213. The Points on Appeal raised by Appellant Nancy Farmer in each of her four appeals are virtually identical.

Respondent Receiver Jackie Blackwell, in this appeal, is in a similar position to Respondent Receiver Julie Smith in SC84210, Respondent Trustee Elaine Healey in SC84211 and Respondent Receiver Sharon Morgan in SC84213. Respondents Blackwell, Smith, Healey and Morgan are represented by the same counsel in these four appeals. Oral arguments with respect to these four appeals are being consolidated.

There are some factual differences in the underlying cases below which may or may not need to be reached, depending upon what issues may ultimately be determined by the Court to be dispositive insofar as the appeals are concerned. Consequently, it is appropriate that the Statement of Facts in this Brief of Respondent Blackwell set forth separately those facts which are relevant to this case in the trial court and this appeal.

In other respects, for Respondent Blackwell to simply set forth the same arguments and authorities in this Brief as those set forth in the Brief of Respondent Smith in SC84210 results in the expenditure of more time by the Judges of this Court in reading and considering Briefs, as well as another “tree being cut” to provide the necessary paper.

Consequently, Respondent Blackwell incorporates by reference the statements, authorities and arguments set forth in the Brief of Respondent Smith in SC84210 into this Brief. Where additional statements, authorities or arguments to those contained in the Brief of Respondent Smith in SC84210 are appropriate, they are hereinafter set forth.

STATEMENT OF FACTS

The Commencement of the Case and Stay Order

On June 20, 1989, the Missouri Public Service Commission (“PSC”) entered a Report and Order which ordered a reduction in Southwestern Bell Telephone Company’s (“Southwestern Bell’s”) revenue requirement by \$101,323,000; disapproved Southwestern Bell’s TeleFuture 2 plan; and ordered Southwestern Bell to file tariffs implementing the Report and Order with an effective date of July 1, 1989. Following a denial of its Application for Rehearing, Southwestern Bell filed its Petition for Writ of Revenue and for Stay on July 21, 1989, in the Circuit Court against the PSC which was docketed as Case No. CV189-808CC. L.F. 18-20.

Numerous parties intervened or appeared in the case, including the Office of Public Counsel, AT & T Communications of the Southwest, United Telephone Co. of Missouri, GTE North Incorporated, MCI Telecommunications Corporation, U.S. Sprint Communications Company Limited Partnership, City of Oak Grove, Comptel of Missouri and AT & T Information Systems. L.F. 33, 57.

While Southwestern Bell’s Application for Rehearing was pending before the PSC, Division II of the Circuit Court in Case No. CV189-740CC entered Temporary Restraining Orders on June 30, 1989, and again on July 14, 1989, restraining the PSC from enforcing that portion of its June 20, 1989, Report and Order requiring Southwestern Bell to implement new tariffs on July 1, 1989, conditioned upon Southwestern Bell posting a bond in the amount of \$101,323,000 guaranteeing the payment of any refund that might be ordered by the Court. L.F. 34-35.

The Office of Public Counsel had also filed a Petition for Review with respect to the June 20, 1989, Report and Order, and that Petition was docketed as Case No. CV189-809CC. On July 21, 1989, Case No. CV189-809CC was consolidated with Case No. CV189-808CC before Judge

Brown. L.F. 1, 32.

A hearing was held before Judge Brown on August 11, 1989, upon Southwestern Bell's request for a stay order. L.F. 33. On September 5, 1989, Judge Brown entered an Order Granting Stay of the PSC's Report Order but which required Southwestern Bell to pay into the registry of the Court all monies which Southwestern Bell collected from and after July 1, 1989, which were in excess of the rates authorized by the PSC's June 20 Report and Order and which required other detailed actions and procedures by Southwestern Bell. L.F. 33-44.

Order Appointing First Receiver

On September 15, 1994, Judge Brown entered an Order Appointing Receiver which found that substantial monies would be coming into the Court registry which would need to be held for a lengthy period of time, found that it was not fair to impose upon the Circuit Clerk the additional responsibilities associated with the monies, and found that the monies should be held and invested as provided in Section 483.310, RSMo, and Missouri Supreme Court Rule 68.02. The Order appointed Jackie Blackwell as Receiver of the funds, directed her to perform those administrative duties under Section 483.310 with respect to the funds which would, absent the appointment of a Receiver be performed by the Circuit Clerk, directed that the provisions of Section 483.310 continue to govern the investment of the funds, reserved investment decisions to the Court, provided for a bond for the Receiver, authorized a monthly fixed payment to the Receiver for her services, authorized the Receiver to pay expenses of less than \$500 and directed that the Receiver receive Court approval before disbursing any other funds or interest thereon. L.F. 45-47.

On September 26, 1989, Southwestern Bell, Public Counsel and the PSC advised the Court that a settlement had been effected. Southwestern Bell and Public Counsel filed dismissals of their

Petitions for Review, and Judge Brown entered an Order dismissing the Petition for Review and dissolving the Stay Order of September 5. L.F. 48-49, 14.

Certain Intervenor's contested the Dismissal Order of September 26, 1989. As of October 1, 1989, Southwestern Bell had not paid any funds into the registry of the Court. On October 5 and October 10, 1989, certain Intervenor's filed motions contesting the dismissal and requesting sanctions against Southwestern Bell. On October 13 the parties appeared by counsel before the Court and an accelerated briefing schedule was established. Following oral arguments on October 23, Judge Brown on October 24, 1989, entered an Order which in substantial part vacated the September 26 order of dismissal, found that no determination had been made with respect to the entitlement to monies that were collected by Southwestern Bell between July 1 and September 26, 1989, in excess of the June 20 Report and Order, and ordered Southwestern Bell to pay such excess amount collected plus 9% annual interest into the registry of the Court by November 2, 1989. L.F. 50-56.

The Prohibition Proceedings

Southwestern Bell sought a writ of prohibition in the Western District of the Missouri Court of Appeals, and following the issuance of a preliminary rule in prohibition by that court, and quashing of the preliminary rule and the certification of a dissenting judge, the prohibition proceedings were transferred to the Supreme Court. See, *State ex rel. Southwestern Bell Telephone v. Brown*, 795 S.W.2d 385 (Mo. banc 1990) (the "Supreme Court Opinion"). The Supreme Court Opinion filed on September 11, 1990, upheld the authority of Judge Brown to act within the 30 days following the dismissal order of September 26 by entering the October 24, 1989, Order, and the preliminary rule of prohibition which the Supreme Court had adopted was quashed. A motion for rehearing was denied by the Supreme Court on October 16, 1990. See Supreme Court Opinion.

Payment by Southwestern Bell and Second Receivership Order

On October 18, 1990, Southwestern Bell tendered and paid to the Court \$26,393,642 in accordance with the Order of October 24, 1989. L.F. 339-354. On October 18, 1990, Judge Brown entered a Second Order Approving Receiver in which he reappointed Jackie Blackwell as Receiver to hold the monies paid into the Court by Southwestern Bell upon substantially the same terms as set forth in the September 5, 1989, Order Appointing Receiver. L.F. 355-359.

On October 18, 1990, Judge Brown entered a Second Order Appointing Receiver in which he appointed Jackie Blackwell as Receiver of the monies “which may be deposited with the Court by Southwestern Bell Telephone Company pursuant to the stay entered on October 18, 1990, in this cause.” L.F. 357. In that Order the Court found:

“... [I]t can ... be reasonably expected that it will be necessary to hold and administer these funds for a lengthy period of time ...

* * *

“... [T]he Court does not believe that it is fair to impose upon the Clerk of the Circuit Court, herself, the additional responsibilities that are engendered by a close monitoring of the investment of these funds ...

“... [T]he Court is of the opinion that the responsibility for administering these funds must fall upon the undersigned judge. ...

“... [T]he Court ... intends that these responsibilities be exercised by the Court with the assistance of someone in whom this Court as (sic) complete confidence and also by one who is readily available to the Court ...

“... [T]he Court has concluded that the expenses of administering these funds

should be borne by the funds themselves and, in particular, from the interest being generated from the investment of the funds . . .” L.F. 356-357.

The Court then considered the provisions of Rule 68.02 authorizing a circuit court to appoint a receiver to “keep, preserve and protect any . . . money . . . deposited in court.” L.F. 357. The Court’s Order directs:

“2. That, as such receiver, she is directed to perform those administrative duties which, absent the appointment of a receiver, would be performed by the Circuit Clerk under the provisions of Section 483.310, RSMo, with the provisions of Section 483.310, RSMo continuing to govern the investment of funds and the application of interest received from the funds;

* * *

“5. That the Court reserves unto itself the final investment decisions . . .

“6. . . . [T]hat interest received from such investments shall be paid over directly to the receiver . . . and that from such interest which is received the receiver shall first pay therefrom the lawful expenses and fees regarding the administration of the funds . . .

* * *

“9. That the receiver is directed to secure and maintain a bond . . .

“10. That the receiver is authorized and directed to pay over to herself personally from such interest so received the sum of Two Hundred Fifty Dollars (\$250.00) per month as compensation for the first year of her services as receiver . . .

“11. That pending further order of the Court the receiver is authorized to from time to time pay such other expenses, or to make disbursements in the administration of the

receivership as may from time to time be necessary, provided, however, (a) that no such expenditures for such other expenses in excess of \$500 shall be made without the written approval of the Court. . . .” L.F. 357-359.

Settlement of the Rate Litigation and the Refund Process

On March 5, 1991, the parties entered into a comprehensive Settlement Agreement and on April 8, 1991, Judge Brown entered a detailed Order Approving Settlement and Directing Distribution of Stay Fund. The April 8, 1991, Order specified refund procedures to be followed, including the determination of amounts to be paid, the procedures to be followed by Southwestern Bell in effecting refunds, the payment of monies from the registry of the Court to Southwestern Bell to effect refunds. L.F. 57-72.

On May 17, 1991, Southwestern Bell filed a Report Relating to Stay Monies In Compliance With Order Issued By the Court On April 8, 1991. That Report indicated that Southwestern Bell requested credit and reimbursement for \$10,380,786.27 which it had paid over to its local service customers in October of 1989, that it had formulated “immediate plans” for distributing \$11,810,940.43 to its customers and the customers of other local exchange customers, that \$264,763 should be retained by the Court for distribution to customers of other local exchange companies “pending an appropriate means of distribution, and that a total of \$21,520,055 dollars of the stay monies should be paid over from the stay fund to Southwestern Bell to make refunds. L.F. 362-368.

On May 20, 1991, Judge Brown entered an order directing that \$264,763 be retained for later distribution and directed that the remaining stay funds (not to exceed \$22,191,726.70) be distributed to Southwestern Bell. L.F. 73-74.

Thereafter the PSC on August 30, 1991, filed its Verification of Substantial Compliance with

Order which verified that the PSC staff had audited the refund program carried out by Southwestern Bell and that such substantially complied with the Court's April 8, 1991, Order Approving Settlement and Directing Distribution of Stay Fund. L.F. 378-389. The Office of Public Counsel also filed on August 30, 1991, a similar Verification of Substantial Compliance. L.F. 390-394.

On September 3, 1991, Southwestern Bell filed its Second Report with respect to its compliance with the April 8, 1991, Order, in which it reported and paid over funds to the Court by two checks, one for \$497,891.46 and the other for \$99,155.45, attributable to customers of Southwestern Bell and customers of the other local exchange carriers who "have not been located". L.F. 395-402.

Then on October 10, 1991, Southwestern Bell filed a Motion for Entry of Satisfaction of Judgment requesting that the Court enter a satisfaction of judgment with respect to the refunds that it had been directed to make. L.F. 403-408. Further filings were thereafter made by Southwestern Bell and Orders entered by the Court with respect to the continuing refund process, including:

- Southwestern Bell's First Request on November 15, 1991, to be reimbursed for additional refunds which it had made totaling \$136,467.07. L.F. 409-416.
Subsequently, the Court entered an Order authorizing such reimbursement. L.F. 426.
- Order on February 20, 1992, by Judge Brown directing the retention of the Stay Fund of funds related to 22 local telephone exchanges where there were no billing tapes reflecting the customers' names, but authorizing credits to be made pro rata and allowing Southwestern Bell to later be reimbursed for such. L.F. 75-82.
- Southwestern Bell's Second and Third Requests on March 20, 1992, and June 19, 1992, requesting to be reimbursed for additional refunds it had made in the amounts of \$17,621.76 and \$6,809.04. L.F. 417-425, 430-437. Subsequently, the Court

entered an Order authorizing such reimbursements. L.F. 425 and 438.

Closure of Second Receivership

On April 26, 1993, Southwestern Bell and all of the parties to the case, including the PSC, the Office of Public Counsel and the Intervenors, filed a Joint Motion to Close Receivership, which provided:

“COME NOW the undersigned parties . . . who jointly move the Court to close the receivership . . . and redirect all remaining funds into the general accounts of the Circuit Court on the following grounds:

“1. All material terms associated with the Order Approving Settlement and Directing Distribution of Stay executed by the Court on or about April 8, 1991, appear to have been satisfied in full.

“2. To the best of the undersigned parties’ knowledge and belief, the receivership contains the following funds as of April 21, 1993:

Principal \$647,711.00

Interest \$130,972.97

Balance \$778,683.97

“In consideration of the foregoing, the undersigned parties move the Court to close the receivership and redirect the remaining funds into the general accounts of the Circuit Court.”

L.F. 440-441. Judge Brown on April 26, 1993, entered an Order Closing Receivership and Transferring Funds into General Accounts of the Circuit Court which found and provided –

- The Court granted the Motion to Close Receivership.

- The Court found that “all material terms associated with the Court’s Order Approving Distribution of Stay Funds dated October 7, 1994, have been satisfied”.
- The Court directed “that all remaining funds contained in the . . . present receivership shall be redirected into the general accounts of the Circuit Court.” (emphasis added).
- The Court found that the funds involved totaled \$778,683.97

L.F. 83-84.

The Third Receivership

Thereafter, the funds transferred into the “general accounts of the Circuit Court” were subsequently transferred into a third receivership which was established by an Order Transferring Funds From The Registry of the Court And Appointing Receiver which was entered by Judge Brown on April 26, 1993. Jackie Blackwell was appointed as Receiver by this Order, with other provisions of the Order being similar to those contained in the Order establishing the second receivership. L.F. 85-90.

Collection and Administrative Duties Imposed on State Treasurer in 1993

Since July 1, 1993, Section 447.575, RSMo 1994 (and 2000), has provided that the State Treasurer has the duty to collect unclaimed property subject to the Unclaimed Property Act and to then generally administer the Act. See generally, Section B of House Bill 566 enacted in 1993.

Proceedings Re the Unclaimed Property Act

The Circuit Court files and the record reflect that neither the Missouri Director of Economic Development, the Missouri State Treasurer, the Missouri State Auditor nor the Missouri Attorney General made any claim or assertion prior to January 4, 2000, that the funds held by the Receiver in Consolidated Case Nos. CV189-8082CC and CV189-809CC should be paid over to the Director of Economic Development or the State Treasurer as unclaimed property pursuant to the Unclaimed

Property Act. Earlier audits of the Cole County Circuit Court had been conducted by the State Auditor. On January 4, 2000, State Auditor Claire McCaskill issued Audit Report No. 2000-01 with respect to the Nineteenth Judicial Circuit in which she “. . . recommended the circuit judges review these receivership cases and determine whether the receivership assets should be distributed to the state Unclaimed Property Section or should be disposed of in another manner” (Emphasis added, Appellant’s Brief, App. 2).

On April 30, 2001, the Attorney General filed a Petition for Writs of Prohibition and of Mandamus in the Western District of the Missouri Court of Appeals styled “State ex rel. Jeremiah W. (Jay) Nixon, Attorney General, Relator v. Cole County Circuit Judges Byron L. Kinder and Thomas J. Brown, III, Respondents”, and docketed as Case No. WD 59910, requesting the issuance of writs directing that the funds and interest thereon in this case and the three companion cases be transferred to the State Treasurer pursuant to the Unclaimed Property Act. L.F. 445, 107. Prior to the filing of the Petition in the Court of Appeals, the Attorney General did not seek relief by motion or petition filed in this case or in the three companion cases. State Treasurer Farmer advised Judges Kinder and Brown that the action in the Court of Appeals was filed by the Attorney General without consulting with or notifying the State Treasurer. The State Treasurer further advised Judges Kinder and Brown that she had no claim to any interest on the funds. L.F. 445-446. On May 3, 2001, Judges Kinder and Brown appointed Alex Bartlett as counsel for the Receivers and Trustee in this case and the three companion cases, directed that he file opposing suggestions in the Attorney General’s action in the Court of Appeals, directed that he attempt to negotiate a settlement and authorized him to take additional necessary or appropriate actions. L.F. 447-448. The Attorney General’s Petition for Writs of Prohibition and Mandamus in the Western District of the Missouri Court of Appeals was denied on

May 30, 2001. L.F. 107.

On June 28, 2001, the Attorney General filed a quo warranto action against Judges Kinder and Brown in the Osage County Circuit Court which was docketed as Case No. 01CV330548, with notice being given by telephone that morning to attorney Alex Bartlett in Jefferson City. At noon on the same day the Attorney General presented the Petition in Case No. 01CV330548 to Circuit Judge Jeff W. Schaperkoetter in Union in Franklin County. The Attorney General secured the issuance of a Preliminary Order in Quo Warranto which deviated from Supreme Court Form 12 and provided that Judges Kinder and Brown “are restrained and enjoined from appropriation or expending” any of the funds in this case and the three companion cases. L.F. 108. The Attorney General’s appeal from the dismissal of that case by Circuit Judge Gael Wood now pends in this Court as SC84301.

By letter dated July 16, 2001, the Attorney General, on behalf of the State Treasurer, demanded that Respondent Blackwell deliver the funds she holds as Receiver in this case to the State Treasurer by 5:00 p.m. on July 20, 2001, or face a personal penalty of up to \$10,000 per day. L.F. 117-118, 108-109. At that time, Respondent Blackwell, under the provisions of the Order was prohibited from making such a disbursement, and Judge Brown was prohibited by the Preliminary Order in Quo Warranto from entering any order effecting an appropriation or expenditure of the funds. L.F. 108-109.

On July 20, 2001, Respondent Blackwell filed her “Motion and Petition for Joinder of Additional Parties and for Relief in an Ancillary Adversary Proceeding in the Nature of Interpleader and for Other Relief” (“Motion and Petition”). L.F. 102. A copy of the Motion and Petition is set forth as Appendix D to this Brief at A-20. In her Motion and Petition the Respondent Receiver noted the contentions of the Attorney General, the July 16 demand to turn over the funds which she held, the

extant orders of the Court which prevented her from doing so and the extant order in the Quo Warranto action against Judges Kinder and Brown which prevented them from entering any order transferring the funds. L.F. 108-109. The Respondent Receiver further reported that efforts to settle the disputes with the State Treasurer had been thwarted by the Attorney General. L.F. 109. The Respondent Receiver asserted that the Court is not required to turn over the funds to the State Treasurer pursuant to the Unclaimed Property Act, but instead has authority to make a different disposition of the funds. L.F. 113.

The Respondent Receiver requested that the Court direct that there be separate ancillary adversary proceedings to determine the following questions:

- “a. Whether the interest income upon the funds in this case for as long as they are held by the Receiver or under the control of the Court can be used (i) to pay the expenses incurred in preserving the funds, and (ii) to pay court-related expenses as provided in Section 483.310, RSMo; and (iii) whether the remainder of the interest income monies are payable to Cole County.
- “b. Whether the funds in this case must be distributed now or whether they can continue to be held in the registry of the Court.
- “c. If it is determined that the funds can no longer continue to be held in the registry of the Court, whether the funds must be disbursed to the State Treasurer to be administered under the Missouri Uniform Disposition of Unclaimed Property Act or whether the Court can make a different disposition of the funds.”

L.F. 114-115.

The Motion and Petition requested that the proceedings be denominated as “Ancillary Adversary

Proceedings”, that no other questions be considered in the Ancillary Adversary Proceedings, and that if it was determined that the funds in this case were not required to be disbursed to the State Treasurer pursuant to the Unclaimed Property Act, the continued holding or the disposition of the funds be determined in further proceedings. L.F. 115.

The Motion and Petition asked that the State Treasurer, the Circuit Clerk and Cole County be joined as parties in the Ancillary Adversary Proceedings to assert any claims they might have to the funds. L.F. 115. The Motion and Petition noted that in *Crist v. ISC Financial Corp.*, 752 S.W.2d 489 (Mo. App. W.D. 1988), it had been held that the Circuit Clerk and Cole County (L.F. 114) were indispensable parties when the matter of interest on funds, held under the Circuit Court’s authority, were in question.

On July 20, 2001, Judge Brown entered an Order which sustained the Motion and Petition of the Receiver. L.F. 119-122. A copy of that Order is set forth as Appendix E to this Brief at A-38.

That Order provided:

“2. A separate trial and proceedings are hereby ordered with respect to the Ancillary Adversary Proceedings Questions as defined in the Receiver’s Motion and Petition, which shall be known as the Ancillary Adversary Proceedings and shall be captioned as [In Re Ancillary Adversary Proceedings Questions]. . . .

“3. The only issues for determination in the Ancillary Adversary Proceedings shall be the Ancillary Adversary Proceedings Questions . . . and the joinder . . . shall not make such person or entity a party for any other purpose in this case.

“4. The Honorable Nancy Farmer as State Treasurer of Missouri, is hereby ordered added as a party to the Ancillary Adversary Proceedings, and it is further ordered (i)

that a copy of this Order and the Receiver's Motion and Petition be served upon the Honorable Nancy Farmer . . . , (ii) that the . . . State Treasurer within 30 days of such service file . . . a pleading asserting any claims which she . . . has under the . . . Unclaimed Property Act to the funds in this case. . . .

"5. Cole County and Ms. Debbie Cheshire as the . . . Circuit Clerk are hereby added as parties to the Ancillary Adversary Proceedings. . . .

"6. The Receiver . . . through her attorney . . . is hereby authorized and directed to participate in the Ancillary Adversary Proceedings to insure that there is a full presentation and exposition of the facts and legal issues. . . .

"7. . . . [O]ther persons . . . may be allowed to intervene . . . as an interested person or to appear as amicus curiae. . . ." (Emphasis added) L.F. 120-121.

In his July 20, 2001, Order, Judge Brown noted the pendency of the quo warranto action in the Osage County Circuit Court. He then recused himself from a determination of the Ancillary Adversary Proceedings Questions for which a separate trial and proceedings had been ordered, requested that the Supreme Court assign a Special Judge to hear and determine the Ancillary Adversary Proceedings Questions and "retain[ed] jurisdiction with respect to all other issues and matters in this case, including . . . the determination of the holding or disposition of any funds which are determined in the Ancillary Adversary Proceedings to not be required to be disbursed to the State Treasurer by reason of the . . . Unclaimed Property Act." L.F. 121-122. The Motion and Petitions and the Orders entered on July 20, 2001, in SC84210, SC84211, SC84212 and SC84213 are substantially similar.

On July 25, 2001, the Supreme Court assigned the Honorable Ward B. Stuckey as Special Judge in "In Re Ancillary Adversary Proceedings Questions, Case No. CV186-1282CC.

On July 25, 2001, the Attorney General filed a Petition in the Circuit Court for Petitioner Nancy Farmer against Judge Kinder, Judge Brown, this Respondent, Julie Smith (Respondent in SC84210), Elaine Healey (Respondent in SC84211) and Sharon Morgan (Respondent in SC84213). Insofar as the funds in this case are concerned, in that Petition the Attorney General sought a mandatory injunction directing Judge Brown and Respondent Receiver to turn over the monies held by the Receiver and interest previously earned and an order directing Judge Brown and Respondent Blackwell to pay penalties personally. L.F. 8 in SC84328.

The State Treasurer on August 20, 2001, filed a Motion to Vacate and Disqualify in the Ancillary Adversary Proceedings which requested that the July 20, 2001, Order be vacated and that Judges Kinder and Brown be disqualified. L.F. 124. On September 10, 2001, Cole County filed its Pleading in Response to Court Order in the Ancillary Adversary Proceedings, and on September 20, 2001, the Claims and Position of the Cole County Circuit Clerk were filed in the Ancillary Adversary Proceedings. L.F. 162-184.

On October 12, 2001, Respondent Blackwell, the other Receivers, and the Trustee filed their Motion for Judgment on the Pleadings in the Ancillary Adversary Proceedings in this case and in the cases that are now on appeal to this Court as SC84210, SC84212, SC84213 and SC84328, as well as in Case No. 01CV325409 which remains pending before Judge Stuckey in the Cole County Circuit Court. L.F. 185. That Motion incorporated by reference the pleadings and motions in the other cases into this case, including Respondent Blackwell's First Amended Motions in Case No. 01CV324800 (L.F. 50 in SC84328).

The State Treasurer's Motion to Vacate, the Motion for Judgment on the Pleadings of the Receivers and Trustee, a Motion for Judgment on the Pleadings by Judges Kinder and Brown in Case

No. 01CV324800 (L.F. 36 in SC84328) and Judge Brown's Motion for Consolidation (L.F. 220 in SC84328) were all noticed for hearing on October 18, 2001, before Judge Stuckey.

On October 18, 2001, prior to the commencement of the hearing before Judge Stuckey, Respondent Blackwell filed her Motion for Order Directing Hearing After the Conclusion of the Ancillary Adversary Proceedings to Consider Disposition of Funds. That Motion requests, if it be determined in the Ancillary Adversary Proceedings that the Court has authority to distribute the funds other than to the State Treasurer pursuant to the Unclaimed Property Act, the trial court to enter an order directing public notice of a hearing at which time interested persons could be heard re the disposition of the funds in this case. L.F. 449. On October 18, 2001, the State Treasurer filed her Objections to Various Motions (L.F. 195-202) and her Suggestions in Opposition to Various Motions (L.F. 203-308).

On October 18, 2001, a hearing was held before Judge Stuckey with respect to the Motions that had been noticed for hearing, and the Motions (except for the Motion to Consolidate, which was withdrawn) were taken under advisement. L.F. 309.

Legal Aid of Western Missouri, Legal Services of Eastern Missouri and Mid-Missouri Legal Services later appeared as Amici Curiae and submitted Suggestions (L.F. 459, 617) and an Appendix of Selected Cases (L.F. 473).

On November 27, 2001, Judge Stuckey entered his Order and Judgment. Appendix A at A-1.

POINTS RELIED ON

I.

The trial court did not err as asserted in Appellant’s Points I through X inasmuch as the State Treasurer had and has no authority or standing to collect unclaimed property or administer the Uniform Disposition of Unclaimed Property Act because those are duties imposed by statute which cannot constitutionally be imposed upon the State Treasurer because of the provisions of Article IV, Section 15, Missouri Constitution, prohibiting the imposition of any duty by law which is not related to the “receipt, investment, custody and disbursement of state funds and funds received from the United States government” and, alternatively, because the statutes imposing collection and administrative duties under said Act were enacted in violation of the “single subject” and “clear title” provisions of Article III, Section 23, Missouri Constitution.

Cases

Board of Public Buildings v. Crowe, 363 S.W.2d 598 (Mo. banc 1962)

Director of Revenue v. State Auditor, 511 S.W.2d 779 (Mo. 1974)

Carmack v. Director, Department of Agriculture, 945 S.W.2d 596 (Mo. banc 1997)

Other Authorities

Article IV, Section 15, 1945 Missouri Constitution

Debates, Missouri Constitutional Convention – June 1944

Article IV, Sections 13, 14 and 22, 1945 Missouri Constitution

Article IV, Section 15, Missouri Constitution, as amended in 1986

Article III, Section 23, Missouri Constitution

Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for

House Bill No. 566, 87th General Assembly, First Regular Session

Sections 447.575, 447.532.1, 447.503(7), 447.539, 447.543 and 447.517, RSMo 2000

Opinion No. 110 of Attorney General Danforth, January 12, 1970

II.

The trial court did not err as asserted in Appellant's Points I through X because the Cole County Circuit Court has the authority to make a disposition of the funds (including interest thereon) in this case even if *arguendo* the State Treasurer has the authority to assert claims and collect unclaimed property pursuant to the Uniform Disposition of Unclaimed Property Act.

Cases

State Tax Commission v. Administrative Hearing Commission, 641 S.W.2d 69 (Mo. banc 1982)

Van Gemert v. Boeing Company, 739 F.2d 730 (2nd Cir. 1984)

State v. Levi Strauss & Co., 715 P.2d 564 (Cal. Bank 1986)

Friar v. Vanguard Holding Corp., 509 N.Y.S.2d 374 (N.Y. App. Div. 1986)

Other Authorities

Article V, Sections 1, Missouri Constitution

Article V, Section 14, Missouri Constitution

Article V, Sections 3, 4 and 8, Missouri Constitution

Article II, Section 1, Missouri Constitution

Section 447.532, RSMo 2000

Kevin M. Forde, *What Can A Court Do With Leftover Class Action Funds? Almost Anything!*”, 35 Judges Journal 19 (Summer 1996, American Bar Association)

III.

The trial court did not err as asserted in Appellant’s Points I through X because the Appellant State Treasurer is not in a position to make any claim to the funds in this case pursuant to the Uniform Disposition of Unclaimed Property Act.

Cases

State ex rel. Eagleton v. Champ, 393 S.W.2d 516 (Mo. banc 1965)

Other Authorities

Section 447.532.1, RSMo 2000

Section 447.503(7), RSMo 2000

IV.

The trial court did not err as asserted in Appellant’s Point III inasmuch as interest upon the funds in this case may be used and disbursed as provided in the Orders Appointing Receiver and in Section 483.310.2, RSMo.

Other Authorities

Section 483.310, RSMo 2000

V.

The trial court did not err as asserted in Appellant's Point IV inasmuch as the Motion for Judgment on the Pleadings incorporated other pleadings and motions, that Motion could be considered as a motion to dismiss and the trial court could properly conclude that the State Treasurer could not assert a claim to the funds or had not properly asserted a claim to the funds.

Cases

Angelo v. City of Hazelwood, 810 S.W.2d 706 (Mo. App. E.D. 1991)

VI.

The trial court did not err as asserted in Appellant's Points V, VI, VII, VIII, IX and X inasmuch as the Cole County Circuit Court had and continues to have jurisdiction over the funds in this case, any claim to the funds held in this case must be asserted in this case, the Circuit Court has the authority to require persons claiming funds held in this case to appear and show their entitlement to the funds, the Appellant was properly served with the July 20, 2001, Order and the Motion and Petition, and the Appellant is not entitled to any order of disqualification.

Cases

State ex rel. Sullivan v. Reynolds, 107 S.W. 487 (Mo. banc 1907)

Brady v. Ansehl, 787 S.W.2d 823 (Mo. App. E.D. 1990)

Robin Farms, Inc. v. Bartholomew, 989 S.W.2d 238

State ex rel. Gleason v. Rickhoff, 541 S.W.2d 47 (Mo. App. E.D. 1977)

Other Authorities

Supreme Court Rule 66.02

Supreme Court Rule 52.07

Supreme Court Rule 54.01

Supreme Court Rule 44.01(d)

ARGUMENT

I.

The trial court did not err as asserted in Appellant’s Points I through X inasmuch as the State Treasurer had and has no authority or standing to collect unclaimed property or administer the Uniform Disposition of Unclaimed Property Act because those are duties imposed by statute which cannot constitutionally be imposed upon the State Treasurer because of the provisions of Article IV, Section 15, Missouri Constitution, prohibiting the imposition of any duty by law which is not related to the “receipt, investment, custody and disbursement of state funds and funds received from the United States government” and, alternatively, because the statutes imposing collection and administrative duties under said Act were enacted in violation of the “single subject” and “clear title” provisions of Article III, Section 23, Missouri Constitution.

Respondent Blackwell adopts by reference as her arguments for this Point I the arguments set forth by Respondent Smith in Point I of her Brief in SC84210, Point I in that Brief being identical to Point I in this Brief.

Respondent Blackwell does, however, set forth here the authorities which are set forth in the Brief of Respondent Smith in SC84210:

Article IV, § 15, 1945 Missouri Constitution

Debates, Missouri Constitutional Convention, June 1944

Article IV, § 13, 1945 Missouri Constitution

Article IV, § 14, 1945 Missouri Constitution

Article IV, § 22, 1945 Missouri Constitution

Article IV, § 15, Current Missouri Constitution

Article III, § 23, Current Missouri Constitution

Article III, § 36, Current Missouri Constitution

Article IV, § 36(a), Current Missouri Constitution

Article X, § 15, 1875 Missouri Constitution

Article X, § 17(1), Current Missouri Constitution

Uniform Disposition of Unclaimed Property Act, Sections 447.500 to 447.595,

RSMo

Board of Public Buildings v. Crowe, 363 S.W.2d 598 (Mo. banc 1962)

Blydenburg v. David, 413 S.W.2d 284 (Mo. banc 1967)

Opinion No. 110 of Attorney General Danforth, January 12, 1970

Director of Revenue v. State Auditor, 511 S.W.2d 779 (Mo. 1974)

Buechner v. Bond, 650 S.W.2d 611 (Mo. banc 1983)

*State ex rel. Thompson v. Board of Regents for Northeast Missouri State
Teachers'*

College, 264 S.W. 698 (Mo. banc 1924)

Howell v. Division of Employment Security, 215 S.W.2d 467 (Mo. 1948)

Conference Committee Substitute for Senate Committee Substitute for

House Committee Substitute for House Bill No. 566, 87th General

Assembly, First Regular Session

Carmack v. Director, Department of Agriculture, 945 S.W.2d 956

(Mo. banc 1997)

Home Builders Association of St. Louis v. State, Case No. SC83863,

2002 WL 1051989, ____ S.W.3d ____ (Mo. banc May 28, 2002)

Kelly v. Hanson, 931 S.W.2d 816 (Mo. App. W.D. 1996)

State v. Planned Parenthood, 66 S.W.3d 16 (Mo. banc 2002)

Wilkes v. The King, (1768) Wilm. at pp. 327

Cooley, “Predecessors of the Federal Attorney General: The Attorney General

in England and the American Colonies”, *The American Journal of Legal*

History, Vol. 2, pages 304, 307 (1958)

Section 447.503(7), RSMo 2000

Section 447.517, RSMo 2000

Section 447.532.1, RSMo 2000

Section 447.539, RSMo 2000

Section 447.543, RSMo 2000

Section 447.575, RSMo 2000

House Bill No. 1088, 82nd General Assembly, Second Regular Session

Section 100.260, RSMo 2000

Section 104.150, RSMo 2000

Section 104.440, RSMo 2000

Sections 228.290 through 288.330, RSMo 2000

Supreme Court Rule 6.04

Supreme Court Rule 7

Supreme Court Rule 7.02

II.

The trial court did not err as asserted in Appellant's Points I through X because the Cole County Circuit Court has the authority to make a disposition of the funds (including interest thereon) in this case even if *arguendo* the State Treasurer has the authority to assert claims and collect unclaimed property pursuant to the Uniform Disposition of Unclaimed Property Act.

Respondent Blackwell adopts by reference as her argument for this Point II the arguments set forth by Respondent Smith in Point II of her Brief in SC84210, Point II in that Brief being identical to Point I in this Brief.

In addition to the reasons and arguments set forth in the Brief of Respondent Smith in SC84210, the facts in this case reflect additional reasons why relief cannot be granted to the Appellant. We note those briefly.

The Record reflects that all parties to the rate litigation, including the Office of Public Counsel, joined in the Joint Motion to Close Receivership which was filed on April 26, 1993, which requested that the second receivership be closed and that the funds be paid “into the general accounts of the Circuit Court”. L.F. 440-441. Judge Brown then entered the April 26, 1993, Order Closing Receivership and Transferring Funds Into General Accounts of the Circuit Court. L.F. 83. That Order, since it had been requested by all parties to the case, in effect, “docked” all possible claims of any person or entity to the funds in this case. The third receivership was then established by Judge Brown's

April 26, 1993, Order Transferring Funds From the Registry of The Court and Appointing Receiver.

L.F. 85-90. No motions were ever made to modify the April 26, 1993, orders; no original writ proceedings were ever filed challenging the April 26, 1993, orders; no attempt was made to appeal the April 26, 1993, orders; and this appeal is not directed to the April 26, 1993, orders. Consequently, the Appellant cannot now take issue with those April 1993 orders or assert any claims to the funds.

Respondent Blackwell does, however, set forth here the authorities which are set forth in the Brief of Respondent Smith in SC84210:

Article II, § 1, Current Missouri Constitution

Article V, § 1, Current Missouri Constitution

Article V, § 14, Current Missouri Constitution

Article V, § 3, Current Missouri Constitution

Article V, § 4, Current Missouri Constitution

Article V, § 8, Current Missouri Constitution

State ex rel. Weinstein v. St. Louis County, 451 S.W.2d 99 (Mo. banc 1970)

State Auditor v. Joint Committee on Legislative Research, 956 S.W.2d 228

(Mo. banc 1997)

Missouri Coalition for the Environment v. Joint Committee on Administrative

Rules, 948 S.W.2d 125 (Mo. banc 1997)

State Tax Commission v. Administrative Hearing Commission, 641 S.W.2d 69

(Mo. banc 1982)

United States v. Morgan, 307 U.S. 183 (1937)

Market Street Railway Co. v. Railroad Commission, 171 P.2d 875

(Cal. Bank 1946)

State ex rel. South Missouri Pine Lumber Co. v. Dearing, 79 S.W. 454

(Mo. banc 1904)

State ex rel. Hampe v. Ittner, 263 S.W.2d 158 (Mo. 1924)

Supreme Court Rule 68.02

Van Gemert v. Boeing Company, 739 F.2d 730 (2nd Cir. 1984)

Friar v. Vanguard Holding Corp., 509 N.Y.S.2d 374 (N.Y. App. Div. 1986)

Kevin M. Forde, “*What Can A Court Do With Leftover Class Action Funds?*

Almost Anything!”, 35 Judges’ Journal 19 (Summer 1996, American Bar

Association). A copy of this article is set forth in Appendix B of this

Brief at A-05.

Powell v. Georgia-Pacific Corp., 119 F.3d 703 (8th Cir. 1997)

Democratic Central Committee of the District of Columbia v. Washington

Metropolitan Area Transit Commission, 84 F.3d 451 (D.C. 1996)

Houck v. Folding Carton Administration Committee, 881 F.2d 494 (7th Cir.

1989), *on remand sub nom. In Re Folding Carton Antitrust Litigation*,

No. MDL 250, 1991 WL 32857 (N.D. Ill. March 6, 1991)

Jones v. National Distillers, 56 F.Supp.2d 355 (S.D. N.Y. 1999)

Northern Natural Gas Co. v. Federal Power Commission, 225 F.2d 886

(8th Cir. 1954)

In Re Wells Fargo Securities Litigation, 991 F.Supp. 1193 (N.D. Cal. 1998)

State v. Levi Strauss & Co., 715 P.2d 564 (Cal. Bank 1986)

In Re Miamisburg Train Derailment Litigation, 635 N.E.2d 46 (Ohio App. 1993)

Uniform Disposition of Unclaimed Property Act, Sections 447.500 to

447.595, RSMo

28 U.S.C. § 2041

28 U.S.C. § 2042

Section 447.532, RSMo 2000

III.

The trial court did not err as asserted in Appellant's Points I through X because the Appellant State Treasurer is not in a position to make any claim to the funds in this case pursuant to the Uniform Disposition of Unclaimed Property Act.

Respondent Blackwell adopts by reference as her arguments for Point III the arguments set forth by Respondent Smith in Point III of her Brief in SC84210, Point III in that Brief being identical to Point III in this Brief.

Respondent Blackwell does, however, set forth here the authorities which are set forth with respect to Point III in the Brief of Respondent Smith in SC84210:

Uniform Disposition of Unclaimed Property Act, Sections 447.500 to

447.595, RSMo

Section 447.503(7), RSMo 2000

Section 447.532.1, RSMo 2000

House Bill No. 1088, 82nd General Assembly, Second Regular Session

State ex rel. Eagleton v. Champ, 393 S.W.2d 516 (Mo. banc 1965)

IV.

The trial court did not err as asserted in Appellant's Point III inasmuch as interest upon the funds in this case may be used and disbursed as provided in the Orders Appointing Receiver and in Section 483.310.2, RSMo.

Respondent Blackwell adopts by referenced as her arguments for this Point IV the arguments

set forth in Respondent Smith in Point IV of her Brief in SC84210, Point IV in that Brief being substantially similar to Point IV in this Brief.

Respondent Blackwell does, however, set forth here the authority which is set forth with respect to Point IV in the Brief of Respondent Smith in SC84210:

Section 483.310, RSMo

V.

The trial court did not err as asserted in Appellant's Point IV inasmuch as the Motion for Judgment on the Pleadings incorporated other pleadings and motions, that Motion could be considered as a motion to dismiss and the trial court could properly conclude that the State Treasurer could not assert a claim to the funds or had not properly asserted a claim to the funds.

Respondent Blackwell adopts by reference as her arguments for this Point V the arguments set forth by Respondent Smith with respect to Point V of her Brief in SC84210, Point V in that Brief being identical to Point V in this Brief.

Respondent Blackwell does, however, set forth here the authorities which are set forth with respect to Point V in the Brief of Respondent Smith in SC84210:

Angelo v. City of Hazelwood, 810 S.W.2d 706 (Mo. App. E.D. 1991)

VI.

The trial court did not err as asserted in Appellant's Points V, VI, VII, VIII, IX and X inasmuch as the Cole County Circuit Court had and continues to have jurisdiction over the funds in this case, any claim to

the funds held in this case must be asserted in this case, the Circuit Court has the authority to require persons claiming funds held in this case to appear and show their entitlement to the funds, the Appellant was properly served with the July 20, 2001, Order and the Motion and Petition, and the Appellant is not entitled to any order of disqualification.

Respondent Blackwell adopts by reference as her arguments for this Point VI the arguments set forth by Respondent Smith with respect to Point VI of her Brief in SC84210, Point VI in that Brief being identical to Point VI in this Brief.

Respondent Blackwell does, however, set forth here the authorities which are set forth with respect to Point VI in the Brief of Respondent Smith in SC84210:

State ex rel. Sullivan v. Reynolds, 107 S.W. 487 (Mo. banc 1907)

Neun v. Blackstone Building & Loan Association, 50 S.W. 436 (Mo. 1899)

Supreme Court Rule 66.02

Supreme Court Rule 52.07

Crist v. ISC Financial Corp., 752 S.W.2d 489 (Mo. App. W.D. 1988)

Brady v. Ansehl, 787 S.W.2d 823 (Mo. App. E.D. 1990)

Roosevelt Federal Savings & Loan Association v. First National Bank of Clayton,

614 S.W.2d 289 (Mo. App. E.D. 1981)

Supreme Court Rule 54.01

Supreme Court Rule 54.02

American Refractories Co. v. Combustion Controls, 70 S.W.3d 660

(Mo. App. S.D. 2002)

State ex rel. Fischer v. Public Service Commission, 670 S.W.2d 24

(Mo. App. W.D. 1984)

State on Inf. of Attorney General v. Arkansas Lumber Co., 190 S.W. 894

(Mo. banc 1916))

Ainsworth v. Old Security Life Insurance Co., 685 S.W.2d 583

(Mo. App. W.D. 1985)

In Re Transit Casualty Co. in Receivership, Pulitzer Publishing Co. v.

Transit Casualty Co. in Receivership, 43 S.W.3d 293 (Mo. banc 2001)

Clay v. Eagle Reciprocal Exchange, 368 S.W.2d 344 (Mo. 1963)

In Re Transit Casualty Co. in Receivership v. William Blair Realty

Partners, II, v. Transit Casualty Co. in Receivership, 900 S.W.2d 671

(Mo. App. W.D. 1995)

Article II, § 1, Current Missouri Constitution

Supreme Court Rule 51.07

Supreme Court Rule 2, Canon 3

Article V, § 4, Current Missouri Constitution

State ex rel. Buchanan v. Jensen, 379 S.W.2d 529 (Mo. banc 1964)

Robin Farms, Inc. v. Bartholomew, 989 S.W.2d 238 (Mo. App. W.D. 1999)

State v. Kinder, 942 S.W.2d 313 (Mo. banc 1996)

Supreme Court Rule 44.01(d)

State ex rel. Gleason v. Rickhoff, 541 S.W.2d 47 (Mo. App. E.D. 1977)

Jenkins v. Jenkins, 784 S.W.2d 640 (Mo. App. W.D. 1990)

CONCLUSION

For the reasons set forth in the Brief of Respondent Smith in SC84210 and hereinabove, the Order and Judgment entered by Judge Stuckey on November 27, 2001, should be affirmed.

Respectfully submitted,

HUSCH & EPPENBERGER, LLC

By: _____
ALEX BARTLETT, #17836

Monroe House, Suite 300
235 East High Street
Jefferson City, MO 65101
Office: (573) 635-9118
Fax No: (573) 634-7854

Attorneys for Respondent Jackie Blackwell

CERTIFICATE OF COMPLIANCE
WITH RULE 84.06

The undersigned certifies:

1. That this Brief complies with Rule 84.06; and
2. That this Brief contains 10,168 words according to the word count feature of Microsoft Word Version 1997 software with which it was prepared.
3. That the disks accompanying this Brief have been scanned for viruses, and to the best of his knowledge are virus-free.
4. That this Brief meets the standards set out in Mo. Civil Rule 55.03.

Alex Bartlett

CERTIFICATE OF SERVICE

The undersigned does hereby certify that copies of the foregoing Brief along with a double-sided, high-density IBM PC compatible disk with the text of the Brief were hand-delivered or mailed via United States Mail, postage prepaid, on July 18, 2002, to Mr. James McAdams, Office of the Missouri Attorney General, P. O. Box 899, Jefferson City, MO 65102, attorney for Appellant Nancy Farmer, to Henry T. Herschel, Blitz, Bardgett & Deutsch, L.C., 308 East High Street, Suite 301, Jefferson City, MO 65101, attorney for Respondent Cole County, and to J. Kent Lowry, Armstrong, Teasdale, LLP, 3405 West Truman Boulevard, Jefferson City, MO 65109, attorney for Respondent Debbie Cheshire.

Alex Bartlett